



Printer's Error
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HOUSE BILL No. 1170

DIGEST OF HB 1170 (Updated January 28, 2008 5:44 pm - DI 107)

Citations Affected: IC 22-9.

Synopsis: Civil rights commission proceedings. Provides: (1) that an order by the civil rights commission may include payment of reasonable attorney's fees incurred by certain complainants; and (2) that a civil action based on a claim that is the basis for a complaint filed with the civil rights commission may be tried by a court or by a jury. Eliminates the requirement that both the complainant and respondent must agree in writing to have a claim that is the basis for a finding of probable cause by the civil rights commission decided in a court.

Effective: July 1, 2008.

Orentlicher, Bardon

January 14, 2008, read first time and referred to Committee on Judiciary.
January 24, 2008, reported — Do Pass.
January 28, 2008, read second time, amended, ordered engrossed.

HB 1170—LS 6410/DI 96+



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1170

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) The commission shall
3 establish and maintain a permanent office in the city of Indianapolis.
4 (b) The commission may appoint such attorneys and other
5 employees and agents as it considers necessary, fix their compensation
6 within the limitation provided by law, and prescribe their duties. All
7 these employees, with the exception of the executive director and
8 attorneys, shall be appointed by the commission from eligible lists to
9 be promulgated by the department of personnel as the result of a
10 competitive examination held under IC 4-15-2 and rules of the
11 department and on the basis of training, practical experience,
12 education, and character. However, special consideration and due
13 weight shall be given to the practical experience and training that a
14 person may have for the particular position involved regardless of ~~his~~
15 **the person's** academic training. Promotions, suspensions, and removal
16 of persons appointed from such lists shall be in accordance with
17 IC 4-15-2. The reasonable and necessary traveling expenses of each

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employee of the commission while actually engaged in the performance of duties in behalf of the commission shall be paid in accordance with the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(e) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

(f) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make **recommendation** **recommendations** to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(g) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, handicap, national origin, or ancestry.

(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because ~~he~~ **the person** filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under



1 its investigation.

2 (i) The commission may hold hearings, subpoena witnesses, compel
3 their attendance, administer oaths, take the testimony of any person
4 under oath, and require the production for examination of any books
5 and papers relating to any matter under investigation or in question
6 before the commission. The commission may make rules as to the
7 issuance of subpoenas by individual commissioners. Contumacy or
8 refusal to obey a subpoena issued under this section shall constitute a
9 contempt. All hearings shall be held within Indiana at a location
10 determined by the commission. A citation of contempt may be issued
11 upon application by the commission to the circuit or superior court in
12 the county in which the hearing is held or in which the witness resides
13 or transacts business.

14 (j) The commission may appoint administrative law judges other
15 than commissioners, when an appointment is deemed necessary by a
16 majority of the commission. The administrative law judges shall be
17 members in good standing before the bar of Indiana and shall be
18 appointed by the chairman of the commission. An administrative law
19 judge appointed under this subsection shall have the same powers and
20 duties as a commissioner sitting as an administrative law judge.
21 However, the administrative law judge may not issue subpoenas.

22 (k) The commission shall state its findings of fact after a hearing
23 and, if the commission finds a person has engaged in an unlawful
24 discriminatory practice, shall cause to be served on this person an order
25 requiring the person to cease and desist from the unlawful
26 discriminatory practice and requiring the person to take further
27 affirmative action as will effectuate the purposes of this chapter,
28 including but not limited to the power:

29 ~~(A)~~ **(1)** to restore complainant's losses incurred as a result of
30 discriminatory treatment, as the commission may deem necessary
31 to assure justice. However, this specific provision when applied
32 to orders pertaining to employment shall **not** include ~~only wages;~~
33 ~~salary; or commissions;~~ **punitive damages;**

34 ~~(B)~~ **(2)** to require the posting of notice setting forth the public
35 policy of Indiana concerning civil rights and respondent's
36 compliance with the policy in places of public accommodations;

37 ~~(C)~~ **(3)** to require proof of compliance to be filed by respondent
38 at periodic intervals; ~~and~~

39 ~~(D)~~ **(4)** to require a person who has been found to be in violation
40 of this chapter and who is licensed by a state agency authorized
41 to grant a license to show cause to the licensing agency why ~~his~~
42 **the** license should not be revoked or suspended; **and**



(5) to require reasonable attorney's fees paid to a prevailing complainant (as defined in section 3(n)(1) of this chapter).

(l) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(m) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(n) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(o) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(p) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (k). If the commission determines that a party to the consent agreement is not complying with ~~it~~, **the consent agreement**, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(q) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall



1 adopt by rule standards under which the commission may issue such an
2 order.

3 (r) Upon notice that a complaint is the subject of an action in a
4 federal court, **a circuit court, or a superior court**, the commission
5 shall immediately cease investigation of the complaint and may not
6 conduct hearings or issue findings of fact or orders concerning that
7 complaint.

8 SECTION 2. IC 22-9-1-16 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) A respondent or
10 a complainant may elect to have the claims that are the basis for a
11 **finding of probable cause complaint filed with the commission**
12 decided in a civil action as provided by section 17 of this chapter.
13 ~~However, both The respondent and the complainant must agree in~~
14 ~~writing to have the claims decided in a court of law. The agreement~~
15 ~~must be on a form provided by the commission.~~

16 (b) The election may not be made if:

17 (1) the commission has begun a hearing on the record under this
18 chapter with regard to a finding of probable cause **and the**
19 **complaint has been pending with the commission for no more**
20 **than ninety (90) days; or**

21 (2) **the commission has dismissed the complaint under**
22 **IC 22-9-1-6(m).**

23 SECTION 3. IC 22-9-1-17 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) If a timely
25 election is made under section 16 of this chapter, the complainant may
26 file a civil action in a circuit or superior court having jurisdiction in the
27 county in which a discriminatory practice allegedly occurred.

28 (b) If the court **or jury** finds that a discriminatory practice has
29 occurred, the court **or jury** may grant the relief allowed under
30 IC 22-9-1-6(k).

31 (c) A civil action filed under this section ~~must may~~ be tried by ~~the~~
32 ~~a court without benefit of a or by a jury.~~

